

CAPITAL EXPANSION PAYMENT AGREEMENT

THIS **AGREEMENT** dated the ____ day of _____, 2004, by and between the County of Clarke (hereinafter referred to as "Clarke"), the County of Fauquier (hereinafter referred to as "Fauquier"), the County of Frederick (hereinafter referred to as "Frederick"), and the City of Winchester (hereinafter referred to as "Winchester"), the four jurisdictions being hereafter collectively referred to as "Participating Jurisdictions".

WHEREAS, the Participating Jurisdictions participate in the Clarke-Fauquier-Frederick-Winchester Regional Jail ("Regional Jail"); and

WHEREAS, the Participating Jurisdictions desire to complete a capital expansion of the Regional Jail facilities; and

WHEREAS, Winchester is acting as fiscal agent for the Regional Jail for the capital expansion project; and

WHEREAS, it is anticipated that the cost of such capital expansion will be paid fifty percent (50%) by state funds and fifty percent (50%) by local funds; and

WHEREAS, it is anticipated that the local funds shall be provided by bonds issued by Winchester; and

WHEREAS, payment of the bonds for the local funds shall be by the Participating Jurisdictions pursuant to the provisions of the Paragraph 2 of the Amended and Restated Regional Jail Agreement dated _____, 2004, entered into by the Participating Jurisdictions ("Regional Jail Agreement") and

WHEREAS, it is anticipated that, if necessary, at the completion of the capital expansion project Winchester will borrow funds, by an interest-only note ("Anticipation Note"), in an amount equal to the state share of the cost of the capital expansion, with the Anticipation Note to be paid when the funds for the state share are received from the state; and

WHEREAS, the Participating Jurisdictions desire to agree to provide for payment by each of the Participating Jurisdictions of its respective share of the interest on the Anticipation Note and for payment by each of the Participating Jurisdictions of its respective share of the principal of the Anticipation Note in the event the state should fail to provide the state share in whole or in part.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Participating Jurisdictions do agree as follows:

1. Each Participating Jurisdiction agrees to pay its proportionate share of interest payments under the Anticipation Note, pursuant to the provisions of Paragraph 2 of the Regional Jail Agreement.

2. In the event the state should fail to pay the anticipated state share of the capital expansion project cost, in whole or in part, each Participating Jurisdiction agrees to pay its proportionate share of the principal of the Anticipation Note not paid or reimbursed by the state, pursuant to the provisions of Paragraph 2 of the Regional Jail Agreement.

ATTEST:

CITY OF WINCHESTER

By _____(SEAL)

ATTEST:

CLARKE COUNTY

By _____(SEAL)

ATTEST:

FREDERICK COUNTY

By _____(SEAL)

ATTEST:

FAUQUIER COUNTY

By _____(SEAL)

DRAFT

RTM/lfw-ks
08/04/04

AMENDED AND RESTATED
REGIONAL JAIL AGREEMENT

THIS AGREEMENT dated the ____ day of _____, 2004, by and between the County of Clarke (hereinafter referred to as "Clarke"), the County of Fauquier (hereinafter referred to as "Fauquier"), the County of Frederick (hereinafter referred to as "Frederick"), and the City of Winchester (hereinafter referred to as "Winchester"), the four jurisdictions being hereafter collectively referred to as "Participating Jurisdictions".

WHEREAS, the Participating Jurisdictions entered into a Regional Jail Agreement dated July 18, 1998, providing for their joint participation in a regional jail; and

WHEREAS, the Participating Jurisdictions desire to provide for further capital expansion of the Regional Jail facilities and to amend and restate the Regional Jail Agreement dated July 18, 1998.

NOW, THEREFORE, that for an in consideration of the mutual undertakings of the parties to this Agreement, the Participating Jurisdictions hereby covenant and agree with each other as follows:

1. JOINT PARTICIPATION. The Participating Jurisdictions agree to participate in a regional jail to be known as the CLARKE-FAUQUIER-FREDERICK-WINCHESTER REGIONAL JAIL ("Regional Jail"), pursuant to

the authority of Article 5 of Chapter 3 of Title 53.1 of the Code of Virginia (§53.1-105 et seq.).

2. DIVISION OF CAPITAL COSTS. For each fiscal year, capital improvement costs for Regional Jail facilities, including, without limitation, the cost of designing, construction, and equipping the facility and land acquisition costs, and including debt service payments on loans for capital improvements, shall be divided and paid by each Participating Jurisdiction based on the average prisoners per day for each Participating Jurisdiction for the preceding three fiscal years, divided by the total average prisoners per day of all the Participating Jurisdictions for the same period of time.

3. DIVISION OF OPERATING AND MAINTENANCE COSTS. For each fiscal year, each Participating Jurisdiction shall be responsible for the payment for the operation and maintenance costs of the Regional Jail based on the average prisoners per day for each Participating Jurisdiction for the preceding three fiscal years, divided by the total average prisoners per day of all the Participating Jurisdictions for the same period of time.

4. FISCAL YEAR. The fiscal year of the Regional Jail shall be from July 1 through June 30.

5. REGIONAL JAIL BOARD.

A. The Participating Jurisdictions shall be entitled to representation on the Regional Jail Board as follows:

- Three (3) members from Clarke County;
- Four (4) members from Frederick County;
- Four (4) members from the City of Winchester.
- Three (3) members from Fauquier County

B. The members shall be appointed by the governing bodies of the respective Participating Jurisdictions; provided, however, each jurisdiction shall appoint as one of its members the Sheriff from the jurisdiction. The appointments (except for the Sheriff) shall be for terms of four (4) years. Each jurisdiction shall appoint the Sheriff of the jurisdiction to the Board to a term concurrent with his or her term as Sheriff. The governing body may remove any member it appoints, except the Sheriff, at any time without cause, and appoint a successor. Appointments to fill vacancies shall be for the unexpired terms. Board members shall serve without compensation; however, members may be paid for actual, necessary expenses incurred in carrying out their duties.

C. The governing bodies of the respective Participating Jurisdictions may also appoint an alternate for each member appointed to the

Regional Jail Board, except that the Sheriff may appoint his or her own alternate. The term of an alternate member shall be the same as the term of the member for whom the alternate member is appointed. The same person may be appointed to more than one alternate position, but an alternate may act as an alternate for only one member at a given Board meeting. The governing body or the Sheriff appointing any alternate member may remove such alternate member at any time without cause, and may appoint a successor. Appointments to fill vacancies shall be for the unexpired terms. Alternate members may attend all meetings of the Regional Jail Board. However, alternate members shall not be permitted to vote or otherwise participate as members in the meetings unless the member for whom the alternate member has been appointed is absent. If a regular member is not present at a meeting of the Board, the alternate for that member shall have all the voting and other rights of a regular member and shall be counted for purposes of determining a quorum. Alternate members shall serve without compensation; however, alternate members may be paid for actual, necessary expenses incurred in carrying out their duties.

D. The Board shall submit annually to the Participating Jurisdictions a report showing its activities and a budget which shall include all

revenues, expenditures, employee compensation schedules, and other data requested by the Participating Jurisdictions.

6. POWERS AND DUTIES. The Board Regional Jail shall have all powers necessary to carry out the purposes of this agreement and the purposes of Article 5 of Chapter 3 of Title 53.1 of the Code of Virginia, including, without limitation, the following powers:

A. To establish rules and regulations governing the operation of the Regional Jail not inconsistent with standards of the State Board of Corrections;

B. To purchase land for the Regional Jail for joint ownership by the Participating Jurisdictions;

C. To provide for all necessary stock, equipment, and structures for the Regional Jail within the budget approved therefor by the Participating Jurisdictions; and

D. To appoint a superintendent of the Regional Jail and necessary jail officers therefor, who shall serve at the will and pleasure of the Board.

7. WITHDRAWAL.

A. In the event any party hereto wishes to withdraw from this agreement, it may do so after written notice to the other parties is given at least one (1) year prior to the effective date of such withdrawal.

B. Any jurisdiction withdrawing shall be entitled to no reimbursement for prior expenditures for the Regional Jail, including, but not limited to, capital improvements, real estate, and tangible personal property. Prior to withdrawal, such withdrawing jurisdiction shall execute any and all documents necessary to release and relinquish all rights, title, and interests in the Regional Jail.

8. AUTHORITY OF JAIL SUPERINTENDENT. All inmates shall be subject to the authority of the Superintendent of the Regional Jail, or his designee(s), while on the premises of the Regional Jail or in the custody of Regional Jail staff.

9. FAUQUIER TRANSPORTATION. Fauquier shall be responsible for transportation of its prisoners to and from the Regional Jail. All local transports in and around the Winchester area shall be provided by the Regional Jail.

10. SEVERABILITY. If any part or parts, section or subsection, sentence, clause, or phrase of this agreement is for any reason declared to be

unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this agreement.

11. COMPLETENESS OF AGREEMENT. This Agreement constitutes the entire agreement between the parties hereto, and supersedes all prior negotiations, representations, or agreements, either oral or written.

12. AMENDMENT. This Agreement may be amended upon mutual agreement of the Participating Jurisdictions by a written amendment or modification hereto authorized by resolutions of the governing bodies of the Participating Jurisdictions.

13. APPROPRIATIONS. The duties and obligations of the Participating Jurisdictions shall be subject to the lawful appropriation of funds by the governing bodies of the Participating Jurisdictions.

ATTEST:

CITY OF WINCHESTER

By _____(SEAL)

ATTEST:

CLARKE COUNTY

By _____(SEAL)

ATTEST:

FREDERICK COUNTY

By _____(SEAL)

ATTEST:

FAUQUIER COUNTY

_____ By _____(SEAL)

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